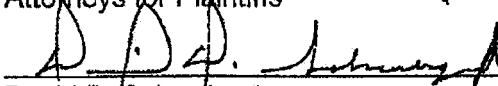


Dated this 24th day of August, 2008.

BUCKLIN, KLEMIN, McBRIDE
& SCHWEIGERT, P.C.
400 East Broadway Avenue, Suite 500
P.O. Box 955
Bismarck, ND 58502-0955
(701) 258-8988
Fax (701) 258-8486
Attorneys for Plaintiffs

By:


David D. Schweigert
ND State Bar ID# 05123

Ariston E. Johnson
ND State Bar ID# 06366

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF STARK

SOUTHWEST JUDICIAL DISTRICT

Pearl Reiss, individually and as
surviving spouse of
Henry Reiss, deceased,

Plaintiff,

V.

Komatsu America Corp. and
Diesel Machinery, Inc.,

Defendants.

Civil No. _____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Pearl Reiss, and alleges and shows to the Court as follows:

GENERAL ALLEGATIONS

1. Plaintiff Pearl Reiss [hereinafter "Pearl"] is and was at all times mentioned herein a resident of Morton County, North Dakota.
2. Plaintiff's decedent, Henry Reiss [hereinafter "Henry"], was at all times mentioned herein a resident of Morton County, North Dakota.
3. Pearl is Henry's surviving wife.
4. On September 26, 2006, Henry was employed by Mariner Construction.
5. On September 26, 2006, Henry's employment with Mariner Construction required him to perform road construction work near Richardton, North Dakota.
6. Henry operated a Dresser Galion model P-3000 rubber-tired roller compactor [hereinafter "P-3000"] as part of his road construction work for Mariner Construction.
7. The P-3000 was manufactured and/or sold by Komatsu America Corp., a

Georgia Corporation or its predecessor in interest [hereinafter sometimes referred to as "Komatsu"].

8. The P-3000 was sold to Mariner Construction by Diesel Machinery, Inc., a South Dakota corporation [hereinafter sometimes referred to as "Diesel Machinery"], on or about December 31, 1990.

9. While Henry was operating the P-3000 on September 26, 2006, on the shoulder of the roadway being constructed, it rolled to the right onto its right side, then onto its top, and then onto its left side, coming to rest on its left side.

10. Henry was crushed by the P-3000 while it was rolling over.

11. Henry sustained injuries as a result of the P-3000 crushing him.

12. On September 26, 2006, Henry died as a direct and proximate result of the injuries he sustained as a result of the P-3000 crushing him.

COUNT I: STRICT PRODUCTS LIABILITY

13. The Plaintiff re-alleges paragraphs 1 through 12 above as if herein set forth in full.

14. The P-3000 was manufactured without a roll bar, roll cage, or other roll-over protection system.

15. Rubber-tired roller compactors such as the P-3000 without a roll bar, roll cage, or other roll-over protection system are unreasonably dangerous to the user.

16. The risk inherent in rubber-tired roller compactors without a roll-over protection system substantially exceeds the cost of manufacturing such roller compactors with a roll-over protection system.

17. Manufacturing rubber-tired roller compactors with a roll-over protection

system would eliminate the unreasonable danger to the user that exists in roller compactors without such a system.

18. The defect caused by the P-3000 being manufactured without a roll-over protection system was the direct and proximate cause of Henry's fatal injuries.

19. Because the Defendants manufactured and/or sold the P-3000 with such a defect, they are strictly liable for the injuries that Henry suffered as a result of the defect and for his death resulting from those injuries.

COUNT II: FAILURE TO WARN

AT TIME OF MANUFACTURE

20. The Plaintiff re-alleges paragraphs 1 through 19 above as if herein set forth in full.

21. The Defendants had a duty to warn purchasers, users, or potential users of the P-3000 about the dangers of operating it without a roll-over protection system.

22. The Defendants failed to warn purchasers, users, or potential users of the P-3000 at the time of manufacture about such dangers.

23. As a direct and proximate result of the Defendants' failure to warn purchasers, users, or potential users of the P-3000 of such dangers, Henry suffered fatal injuries.

24. Because the Defendants breached their duty to warn of such dangers, they are liable for Henry's injuries and death.

COUNT III: FAILURE TO WARN

AT TIME OF DISCOVERY OF DANGER

25. The Plaintiff re-alleges paragraphs 1 through 24 above as if herein set forth

in full.

26. On or before September 26, 2006, the Defendants discovered the dangers of operating the P-3000 without a roll-over protection system.

27. The Defendants had a duty to warn owners or users of the P-3000 of such dangers at the time they were discovered.

28. The Defendants failed to warn owners or users of the P-3000 of such dangers at the time they were discovered.

29. As a direct and proximate result of the Defendants' failure to warn owners or users of the P-3000 of such dangers, Henry suffered fatal injuries.

30. Because the Defendants breached their duty to warn of such dangers, they are liable for Henry's injuries and death.

COUNT IV: NEGLIGENCE

31. The Plaintiff re-alleges paragraphs 1 through 30 above as if herein set forth in full.

32. The Defendants had a duty to design or manufacture the P-3000 to be free of the dangers of operating it without a roll-over protection system.

33. The Defendants designed and/or manufactured the P-3000 without a roll-over protection system or other protection from such dangers.

34. As a direct and proximate result of the Defendants' failure to design or manufacture the P-3000 without a roll-over protection system or other protection from such dangers, Henry suffered fatal injuries.

35. Because the Defendants breached their duty to design or manufacture the P-3000 with a roll-over protection system or other protection from such dangers, they are

liable for Henry's injuries and death.

COUNT V: BREACH OF WARRANTY
OF MERCHANTABILITY

36. The Plaintiff re-alleges paragraphs 1 through 35 above as if herein set forth in full.

37. The Defendants are each merchants with respect to rubber-tired roller compactors.

38. Rubber-tired roller compactors such as the P-3000 are ordinarily used for the purpose of compacting the shoulder of roadways under construction.

39. To be fit for the purpose of compacting roadway shoulders, a rubber-tired roller compactor must have some form of roll-over protection system.

40. The P-3000 did not have any form of roll-over protection system.

41. As a direct and proximate result of the P-3000 not being fit for the purpose of compacting roadway shoulders, Henry suffered fatal injuries.

42. Because the Defendants manufactured and/or sold the P-3000 unfit for its ordinary purpose, they are liable for Henry's injuries and death.

COUNT VI: BREACH OF WARRANTY
OF FITNESS FOR PARTICULAR PURPOSE

43. The Plaintiff re-alleges paragraphs 1 through 37 and paragraphs 39 through 41 above as if herein set forth in full.

44. When the Defendants manufactured and/or sold the P-3000, they were aware or had reason to be aware that the P-3000 was to be used for compacting roadway shoulders.

45. The Defendants failed to select or furnish suitable equipment for compacting roadway shoulders, selling instead the P-3000.

46. Because the Defendants manufactured and sold the P-3000 unfit for the particular purpose of compacting roadway shoulders, they are liable for Henry's injuries and death.

DAMAGES

47. As a direct and proximate result of the facts alleged in paragraphs 1 through 46 above, Pearl has suffered damages as follows:

(a) For the wrongful death of her husband, Henry Reiss, including but not limited to economic damages for medical expenses, funeral costs, burial costs, and lost earnings and non-economic damages for pain, suffering, mental anguish, emotional distress, fear of injury, loss of society and companionship, and loss of consortium, in a reasonable sum but not less than \$50,000.00;

(b) For her grief, mental anguish, and emotional distress by reason of the loss of her husband;

(c) For loss of marital consortium by reason of the loss of her husband;
and

(d) For the non-economic damages Henry suffered prior to his death, including but not limited to mental anguish and fear of injury, in a reasonable sum but not less than \$50,000.00, and for which Henry's cause of action survives his death and Pearl is entitled, as his surviving spouse, to pursue.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff requests that this Court award her damages, in a

reasonable amount but not less than \$50,000.00, including but not limited to:

1. Damages for the wrongful death of Henry Reiss;
2. Damages for her grief, mental anguish, and emotional distress;
3. Pearl's loss of consortium of her husband Henry;
4. Funeral expenses;
5. Loss of income that Henry would have earned had he not died on September


26, 2006;

6. Compensation for Henry's injuries;
7. Compensation for Henry's pain and suffering;
8. Attorney's fees and costs;
9. Interest due from September 26, 2006; and
10. Such other relief as this Court deems just.

Dated this 28th day of August, 2008.

BUCKLIN, KLEMIN, McBRIDE
& SCHWEIGERT, P.C.
400 East Broadway Avenue, Suite 500
P.O. Box 955
Bismarck, ND 58502-0955
(701) 258-8988
Fax (701) 258-8486
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David D. Schweigert
ND State Bar ID# 05123

Ariston E. Johnson
ND State Bar ID# 06366

DEMAND FOR TRIAL BY JURY

The Plaintiff hereby demands a trial by nine jurors on all issues triable by jury.

Dated this 29th day of August, 2008.

BUCKLIN, KLEMIN, McBRIDE
& SCHWEIGERT, P.C.
400 East Broadway Avenue, Suite 500
P.O. Box 955
Bismarck, ND 58502-0955
(701) 258-8988
Fax (701) 258-8486
Attorneys for Plaintiffs

By: 

David D. Schweigert
ND State Bar ID# 05123

Ariston E. Johnson
ND State Bar ID# 06366

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